

**Collective Bargaining Agreement
By & Between the**

City of Marlborough



and the

**Marlborough Police Command Officers
Association**

LOCAL 366, MASSCOP, IUPA, AFL-CIO



July 1, 2018 – June 30, 2021

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THIS AGREEMENT is made by and between the City of Marlborough, hereinafter referred to as the "City" and the Marlborough Police Command Officers, MCOP, Local 366, AFL-CIO, hereinafter referred to as the "Union." For the purpose of this Contract, the Command Officers shall include the ranks of Captain, Lieutenant, and Sergeant. A police officer who has been provisionally promoted to a higher rank will *remain a person covered by the Patrolman's Agreement but will receive the pay and benefits specified for such higher rank.*

ARTICLE I RECOGNITION CLAUSE

The City recognizes the Union as the sole and exclusive bargaining agent for the purpose of establishing wages, hours and all other conditions of employment for all permanent full time members of the Marlborough Police Department Command Officers, excluding the Chief of Police, all Patrol Officers, the Secretary to the Chief of Police, the payroll clerk, police cadets, crossing guards, custodians, and matrons.

ARTICLE II MANAGEMENT RIGHTS CLAUSE

The City will not be limited in any way in the exercise of the functions of management and will have retained and reserved unto itself the right to exercise, without bargaining with the Union, all the powers, authority, and prerogatives of management, including but not limited to, (with the exception of specific terms and conditions covered by this agreement), the following:

- A. The determination of employee classification;
- B. The increase, diminishment, change or discontinuation of operations in whole or in part;
- C. The alteration, addition, or elimination of existing methods of police equipment, police facilities, or programs;
- D. The determination of location, organization, number and training of personnel;
- E. The granting and scheduling of leaves;
- F. The scheduling and enforcement of working hours;
- G. The assignment and requirement of overtime;
- H. The determination of whether goods should be leased, contracted, or purchased;
- I. The hiring of employees, including the determination of qualifications and requirements for the position;
- J. The demotion, suspension, discipline, or discharge of permanent employees for just cause;
- K. The relief of an officer for his/her shift due to incapacity of the officer to perform duties;
- L. The lay-off or relief of employees due to lack of funds or work, and
- M. The making, amendment, and enforcement of rules and regulations and operating and administrative procedures from time to time as the department deems necessary.

ARTICLE III EMPLOYEE RIGHTS

The employees shall have and be protected in the exercise of the right, without fear of penalty or reprisal, to join and assist the Union, following permanent promotion to at least the rank of Sergeant. No representative, department official, or agent of the City shall:

- A. Interfere with, restrain, or coerce employees in the exercise of the right to refrain from joining the Union.
- B. Interfere with the formation, existence, operation, or administration of the Command Officers, Local #366.
- C. An official or duly designated member of the Union if reasonably requested by the Union, shall be granted by the Chief of Police a leave of absence for a reasonable period of time with no loss of pay or benefits to attend meetings of the Mayor and/or City Council of the City, or the General Court of the Commonwealth of Massachusetts concerning a matter or matters relative to the Union or a member thereof.
- D. The Union shall keep the Employer informed of any changes in the roster of the officers or representatives.
- E. The Union representatives shall consist, of four (4) officers elected by the membership as follows: President, Vice President, Secretary, and Treasurer.

ARTICLE IV STABILITY OF AGREEMENT

Section I: No amendment, alteration or variation of the terms or provisions of this Agreement shall bind the parties hereto unless made and executed in writing by said parties.

Section II: Any portion of this Agreement found to be in conflict with any ordinance or statute now in effect, or introduced at a later date, will be null and void. However, all other portions of this Agreement will remain in effect.

ARTICLE V PRIOR AND FUTURE BENEFITS OF RIGHTS

The City agrees that all rights and benefits previously enjoyed by the regular full-time members will remain in effect unless specifically abridged or modified by this Contract. In the event the City proposes in writing to change, diminish, or eliminate such previously enjoyed right which is not expressly covered by this Agreement, both parties will bargain in good faith over the proposed change. The City may submit the dispute over the proposed change to expedited arbitration in which the arbitrator will determine whether the Union is acting unreasonably or in bad faith in refusing to agree to the proposed change, and, if so, whether such change should be implemented. Such submission shall be to the American Arbitration Association in accordance with its rules and regulations, with the cost borne equally by both parties.

ARTICLE VI UNION ACTIVITY

Section I: A Union official and an aggrieved Command Officer shall be granted a reasonable amount of time, in pay status, when the Union Official or Command Officer is

scheduled to work, to attempt to resolve problems or grievances. Permission to leave one's station or job to accomplish the forgoing must be requested of the immediate supervisor of said official and/or Command Officer. Said requested permission to be granted within a reasonable time by the immediate supervisor of said official and/or Command Officer.

Section II: The members of the Union Bargaining Committee not to exceed three (3) who are scheduled to work a day tour of duty during collective bargaining sessions, may be excused from duty without loss of pay for all meetings between the City and the Union for the purpose of negotiating the terms of a contract, or supplements thereto.

Section III: A maximum of six man-days leave without loss of compensation, annually per fiscal year shall be allowed for a Command Officer serving as an officer of Local 366 to attend conventions, meetings, or training sessions conducted by MassCop or its affiliates, not to exceed 24 total days. During years when the National Convention is held, twelve-man days shall be granted not to exceed 48 total days.

ARTICLE VII GRIEVANCE PROCEDURE

All controversies arising out of the interpretation or application of this Agreement, except as specifically noted, will be processed in the following manner. The word "working days", wherever referenced in this Article, shall mean Monday through Friday, with Saturdays, Sundays and Holidays excluded.

STEP 1 Within twenty (20) days of the occurrence of a grievable event, a Union Representative and/or Aggrieved Command Officer may file a written grievance with the Captain who has responsibility for the Aggrieved Officer's organizational unit. Within ten (10) working days of receiving a written grievance, the Captain shall meet with the Union Representative and/or the Aggrieved Command Officer. At or following the meeting, the Captain will make a serious effort to reach a satisfactory conclusion to the grievance. In the event that a satisfactory conclusion is not reached, the Captain shall, within five (5) working days of the meeting and in writing, so state and notify the Union and/or the Aggrieved Command Officer.

STEP 2 If the grievance or dispute is unresolved at Step I, it should be presented, in writing, by the aggrieved Command Officer or the Union to the Chief of Police within seven (7) working days after completion of Step I. The Chief of Police and a Union representative shall meet as speedily as possible to discuss the grievance or dispute, but such meeting shall be held within ten (10) working days of receipt of the grievance. Within five (5) working days after the meeting, the Chief of Police shall forward to the Union a written disposition of the grievance.

STEP 3 If the matter remains unadjusted, the Union may within five (5) working days after receipt of the Chief's disposition, forward the grievance along with the Chief's disposition to the Mayor. The Union and Mayor, or his designee, shall meet on the grievance within seven (7) working days of the receipt of the grievance and within five (5) working days thereafter, the Mayor or his designee shall forward to the Union his disposition of the grievance.

STEP 4 If the grievance remains unresolved, the Union may refer the grievance for the final and binding determination upon the parties to the American Arbitration Association in accordance with its rules and regulations, with the cost of same borne equally by both parties.

A grievance shall be deemed waived unless it is submitted at Step I within twenty (20) working days after the employee or the Union has knowledge or reason to know of its occurrence or unless it is submitted to arbitration at Step IV within twenty (20) working days after the Mayor's answer is received at Step III.

ARTICLE VIII CIVIL SERVICE

In the event that the Legislature of the Commonwealth of Massachusetts exempts the Union's bargaining unit positions from the application of G.L. c. 31, Civil Service, then and only then, Article VIII, Civil Service, shall be deleted.

The Parties acknowledge that the revocation of Civil Service shall not affect Civil Service rights which have come into existence between the City and any employee prior to July 1, 2015. All Civil Service Lists shall remain in effect until Marlborough is removed from Civil Service and if that does not occur, not change to Article VIII shall occur.

The Union will not oppose the City's application to remove its positions from Civil Services.

ARTICLE IX HOURS OF WORK

The Command Officers shall be scheduled to work on regular work shifts or tours of duty and each work shift or tour of duty shall have regular starting and quitting times. All work schedules shall be posted on Department Bulletin Boards at all times. The Chief of Police reserves the right to assign each Command Officer to different work schedules during the term of this Assignment.

- A. Command Officers assigned to the patrol section shall work a thirty-seven and one-half hour workweek consisting of a four day on, two day off schedule.
- B. Command Officers not assigned to the patrol section, including detectives, specialists, and persons assigned to administrative duties may be assigned to work a regular day shift of eight (8) hours, Monday through Friday, followed by two days off. Command Officers working this Administrative schedule shall be granted seventeen (17) additional Administrative Days off to compensate for the difference between this schedule and the four and two schedule.
- C. All work shifts shall have a lunch period included during the regular tour of duty, in accordance with present practice.
- D. The City agrees that there be a Command Officer in charge of every regular shift whenever possible, in accordance with present practice.

ARTICLE X OVERTIME

Section I: All assigned, authorized or approved service outside or out-of-turn of an employee's regularly scheduled tour of duty or shift (other than paid police details) including service on an employee's scheduled day off, or during his vacation, and service performed prior to the scheduled starting time for his regular tour of duty, and service performed subsequent to the scheduled time for conclusion of his regular tour of duty or shift, and including court time as set forth in Section IV, shall be deemed overtime service and paid for as such:

Overtime service shall not include:

- A. An out-of-turn work shift or tour of duty which is substituted for a regular work shift or tour of duty at the request of a Command Officer (subject to Departmental approval) or,
- B. Swapped tour(s) of duty or work shift(s) between individual Command Officers by their mutual agreement subject to department approval.

Section II: If a Command Officer who has left his place of employment or last duty assignment after having completed work on his regular shift or tour of duty or his assigned shift or tour of duty is recalled to Police Headquarters or to any other place and he reports thereat or if a Command Officer is so recalled on a scheduled day off or during his vacation, he shall be paid on an overtime basis for all such time and shall be guaranteed a minimum of four hours overtime recall pay therefore. This provision does not apply when a Command Officer is held over after completion of his regular tour or, pursuant to a requested recall, voluntarily reports to work up to two hours before his regular shift starting time; provided an employee who is ordered in pursuant to a recall shall be paid the four-hour minimum guarantee.

Section III:

- A. A Command Officer who performs overtime service in accordance with the provisions of this Agreement shall receive, in addition to his regular weekly compensation, overtime pay for such hours worked, including any minimum hours payment as may be required by the terms of this Agreement. A Command Officer's FLSA Hourly Overtime Rate shall be calculated by the following formula: weekly pay (base pay and all allowable add-ons) divided by 37.3 multiplied by 1.5 = FLSA hourly overtime rate.
- B. Pay for overtime service shall be in addition to and not in lieu of vacation pay and shall be remitted to Command Officers on a weekly basis.

Section IV: Command Officers of the Police Department who served as witnesses in criminal and/or civil court sessions during off-duty hours shall be paid for such services at a time and one-half rate of their regular pay less witness fees. They shall be paid a minimum of four hours for any and all Marlborough District Court sessions at which they are required to be in attendance.

Command Officers who serve as witnesses in court sessions outside the City of Marlborough shall be paid a minimum of five hours for sessions at which they are required to be in attendance.

Section V:

- A. The City agrees the Command Officers shall be entitled to work any and all extra details so long as it does not interfere with their regular duties.
- B. The City agrees that the Command Officers shall receive their overtime rate of compensation when working for the City.
- C. Command Officers reserve the option of setting their extra paid detail rate up to the overtime rate of each command officer.

**ARTICLE XI
HOLIDAYS**

Section I: Holidays now recognized and observed by the City shall continue to be regarded as paid holidays, and any other day designated by the Governor and approved by the City as a legal state-wide holiday. At the termination of employment for any reason, the Command Officers shall be entitled to all holiday pay accrued. Holidays under this Section shall continue to be observed on the same days on which they have been observed in accordance with past practice.

Section II: Members of the bargaining unit who work on a holiday shall, in addition to receiving regular holiday pay, be paid at a rate of time and one-half. Members of the bargaining unit who are not scheduled to work on a holiday and who do not so work shall receive regular holiday pay. If a member is scheduled to work on a holiday, but does not report for duty, the member shall not be paid at the rate of time and one-half.

If a member is called back on regular day off, he shall be paid at the rate of pay specified in Article X.

**ARTICLE XII
VACATIONS**

Section I: The City shall grant to all Command Officers annual vacations without loss of pay as follows:

- A. For less than one year of service, a vacation allowance of one day for each month of service; not to exceed ten days;
- B. For service of one year or more, but not more than five years, a vacation of two weeks;
- C. For service of five years or more but not more than nine years, a vacation allowance of three weeks;
- D. For service of ten years or more, but not more than fourteen years, a vacation allowance of four weeks;
- E. For fifteen or more years of service, a vacation allowance of five weeks.

Section II: Each vacation shall consist of a seven-day workweek.

Section III: If a Command Officer is out of work on "injured leave" when he is scheduled to be on vacation, he shall remain on "injured leave" and shall be entitled to his vacation during the vacation calendar year after he returns to work.

Section IV: If a Command Officer who qualified for a vacation is unable to work and is on sick leave status, whether compensated or not, such Command Officer may, at his option, be allowed to take his vacation during the period of such sick leave.

Section V: Whenever the employment of a Command Officer of the Police Department is terminated during a year by dismissal through no fault or delinquency on his part or by retirement or death, without having been granted the vacation to which he is entitled under Section I, hereof, he, or in case of his death, his beneficiary shall be paid, at the regular rate of compensation payable to him at the termination of this employment, an amount in lieu of such vacation; provided that no monetary or other allowance has already been made therefor. The word "beneficiary" as used in the Section means the surviving beneficiary or beneficiaries, if any, lawfully designated by the officer under the retirement system of which he is a member, or if there is no such designated beneficiary, the estate of the deceased.

Section VI: Vacation time must be used in the year of the accrual except where prior written permission is obtained from the Chief of Police.

Section VII: Command Officers shall have the right to take single vacation days, following the procedure of present departmental practice.

Section VIII: Command Officers who were Police Officers in the Marlborough Police Department shall observe an anniversary date for vacations and years of service for vacations consistent with the date and years they have enjoyed as Marlborough Police Officers.

Section IX: Vacation leave shall accrue only during the twelve (12) months of paid on-duty injury leave. No vacation accrual shall occur after the twelve (12) months for any reason. An employee who returns to work in the bargaining unit after the City's submission for involuntary retirement has been finally rejected shall be credited in full for all such leave which accrued after the first six months.

Section X: In the Patrol Division, if two Command Officers are scheduled to actually work a specific watch on New Year's Eve, Fourth of July, Labor Day, Thanksgiving Day, Christmas Eve, Christmas Day or New Year's Eve, the Patrol Division Commander may, in the exercise of his sole discretion, authorize one of the two Command Officers to use a single leave day (vacation, personal or family personal day) on the holiday or holiday eve. A request to use a single leave day, under the provisions of this section, may not be submitted any earlier than one week prior to the holiday or holiday eve. If granted, the single leave day may be revoked if the other Command Officer becomes unavailable for duty on the holiday or holiday eve due to illness, injury, bereavement leave or disciplinary action. The review and approval process for requests under this section must be completed in a fair and equitable manner.

**ARTICLE XIII
HEALTH AND LIFE INSURANCE**

Section I: The City agrees that the health insurance plan and benefits in effect at the time of this agreement shall remain in force and effect for the duration of this agreement unless changed by the mutual consent of both parties. The City agrees to contribute seventy (70%) percent of the cost of the Health Maintenance Organization (HMO) and sixty (60%) percent of the cost of the Preferred Provider Organization (PPO).

In the event that another City employee, union or group negotiates a higher percentage of City contribution to the above HMO/PPO, the members of Local 366 shall immediately receive such higher percentage adjustment.

Section IA: In response to Article XIII Health and Life Insurance, specifically being the language "Should the City negotiate with any other individual local or group within the City to increase the City's contribution above 70% HMO or 60% PPO amount, the Union shall then receive the higher benefit", the City will sign the contract with that language contained therein but considers the same unenforceable and will not enforce the same.

Section II: The life insurance plan in effect at the time of this agreement shall remain in force and effect during the duration of this agreement.

Section III: Effective on or about January 1, 1993, the City will provide members with an optional Dental Plan with the cost borne equally (50/50) by both parties.

**ARTICLE XIV
CLOTHING ALLOWANCE**

Section I: Each Command Officer shall receive an annual uniform and clothing allowance, which may also be used to purchase shoes, as follows:

\$1,000 effective July 1, 2014

- A. Each officer shall submit to the Chief of Police payment vouchers for the uniforms and clothing purchased in an amount or amounts not to exceed the above yearly schedule. Said vouchers shall be paid by the City forthwith upon presentation.
- B. Uniforms, clothing and equipment so purchased must conform to department specifications.

Section II: Notwithstanding the provisions of Section III of this Article, the uniforms and civilian clothes of a Command Officer which are torn, stained, ripped, or otherwise mutilated as a result of performance of duty, or in the course of duty, shall be repaired, if possible, and if not repairable, replaced by the City at its sole expense.

Section III: The City shall provide for the cleaning, pressing and minor repairs of Command Officer's uniforms, at its sole cost and expense, in accordance with present practice.

Section IV: The City agrees to replace or repair, at its sole cost and expense the eyeglasses or contact lenses of Command Officers which are damaged or destroyed in the performance of their official duties if such damage was caused by physical contact and provided that notification of said damage or destruction of said eyeglasses or contact lenses is contained in the official police report which details the incident during which such damage or destruction occurred.

ARTICLE XV SICK AND INJURY LEAVE

Section I:

- A. A Command Officer shall be entitled to a leave of absence for sickness or disability, other than that which may result from injury or hazard undergone while in the performance of his regular duties, for a period of fifteen days each year at the rate of one and one-quarter days per completed month of service, and the same accumulates from year to year.
- B. To continue to qualify for non-occupational sick leave in excess of three days, an employee may be required to furnish the City with a medical report from a duly licensed Massachusetts physician on forms supplied by the City setting forth the nature of the Command Officer's incapacitation, its probable duration and stating the Command Officer is unable to perform his regular duties and services. Notwithstanding receipt of the report, the City reserves the right to have the employee examined by its own duly licensed Massachusetts physician, provided that during the period that any physician's examination is pending, the Command Officer shall continue to receive his regular weekly compensation as provided for and to the extent allowed under the provisions of this section.
- C. If the physician's findings coincide, then the Command Officer shall remain on non-occupational sick leave or return to work, whichever is applicable.
- D. If a dispute exists between the two reports then the Command Officer and the City shall jointly select a third duly licensed Massachusetts physician to examine the employee. If the parties fail to agree, either party may request the State Commissioner of Public Health or the Worker's Compensation Board to designate an appropriate specialist.
- E. If the findings of the applicable physician or physicians specify that the Command Officer is unable to perform his duties and services, temporarily, then said employee shall return to work on his next regularly scheduled work day or tour of duty following the date on which the applicable physician states the Command Officer is able to do so.
- F. The expense of all examinations and reports required by the above-stated provisions of this Section shall be borne by the City.
- G. Nothing herein shall prevent the City from requiring a medical report from a duly licensed Massachusetts physician as to the medical condition of an employee who is a chronic sick leave offender for each absence of one day or more.

Section II: Command Officer shall be allowed to accumulate unlimited sick leave.

Section III: A Command Officer who is working a regularly scheduled tour of duty and who reports off sick during tour of duty shall be paid for his entire tour of duty and not have his or her sick leave bank charged with a sick day or portion thereof, if he or she works four or more hours of such tour; if he or she works less than four hours of such tour, he shall have the option to receive straight-time pay based on a 37.3 hour work week for the hours so worked or to have the sick bank charged with that portion of the tour not worked.

Section IV:

- A. Upon superannuation or disability retirement, a Command Officer shall be compensated for one thousand eighty (1,088) hours [based on the Command Officer's accumulated sick leave, up to a maximum of ninety (90) sick days; calculated at 12 hours of compensation, per day] at his or her hourly rate of pay, subject to the following eligibility conditions:

1. Superannuation Retirement

The Command Officer:

- a. Must have maintained a minimum of ninety (90) sick days, annually, for the five (5) years immediately preceding the date of his or her retirement. Notwithstanding the foregoing, a Command Officer, who during the five (5) years immediately preceding his or her retirement, suffered a catastrophic illness or injury, as defined in 5. below, shall be relieved of the requirement of having maintained a minimum of ninety (90) sick days, annually;
- b. Must have completed a minimum of thirty (30) years of creditable service in the Marlborough Police Department; provided, however, that any police officer on the payroll of the Police Department as of June 30, 2007, may also count as creditable service in the Marlborough Police Department, for purposes of sick leave buyback upon retirement only, up to twelve (12) years of service with another Massachusetts public entity, which has been recognized as creditable service for purposes of retirement by a Massachusetts retirement board;¹
- c. Must not have engaged in a proven case of sick leave abuse during the five (5) years immediately preceding his or her retirement;

2. Voluntary or Involuntary Disability Retirement

The Command Officer:

- a. Must have maintained a minimum of ninety (90) sick days, annually, for the five (5) years immediately preceding the date of his or her retirement. Notwithstanding the foregoing, a Command Officer, who during the five (5) years immediately preceding his or her retirement, suffered a catastrophic illness or injury, as defined in 5. below, shall be relieved of the requirement of having maintained a minimum of ninety (90) sick days, annually;

¹ The Command Officers shall also be credited with any military service, as defined and credited under Massachusetts retirement law, M.G.L. c. 32.

- b. Must have completed a minimum of twenty-five (25) years of creditable service in the Marlborough Police Department; provided, however, that any police officer on the payroll of the Police Department as of June 30, 2007, may also count as creditable service in the Marlborough Police Department, for purposes of sick leave buyback upon retirement only, up to twelve (12) years of service with another Massachusetts public entity, which has been recognized as creditable service for purposes of retirement by a Massachusetts retirement board;²
 - c. Must not have engaged in a proven case of sick leave abuse during the five (5) years immediately preceding his or her retirement;
- 3. Calculation of Creditable Service
As used in Paragraphs A-1 & 2 above, the term "creditable service" in the "Marlborough Police Department" shall include:
 - a. A Command Officer's actual length of service as Reserve or Permanent Officer, of any rank, in the Marlborough Police Department; and,
 - b. If applicable, any years and/or months or service credited to the Command Officer for retirement purposes, under the provisions of M.G.L. c. 32, §4(h), for active or reserve military service in the Armed Forces of the United States.
- 4. Contingency in Anticipation of Amendment to State Retirement Statutes
If, on or after August 1, 1997, new or amended statutory language is adopted, relative to reducing the years of service necessary for a police officer to qualify for maximum retirement benefits, then the language of Paragraph A-1 (b) above, shall be amended by substituting, in place of "thirty (30) years", the amount of years of service necessary to achieve maximum retirement benefits under the new or amended statute.
- 5. Catastrophic Illness or Injury Defined
As used herein, the term "catastrophic injury or illness" shall mean a non-police service connected illness or injury, which resulted in a medically necessary, period of treatment or recuperation, in excess of fourteen (14) working days, under the direction of a qualified physician and during which the Command Officer, at the determination of a qualified physician, was unable to perform his or her duties.
- B. Upon termination of employment, except for cause, a Command Officer who does not meet the eligibility conditions for the provisions of Article XV, Section IV, Paragraph A-1 and applicable subsections, shall be paid, at his or her hourly rate of pay, for twenty-five (25%) percent of his or her accumulated sick leave to a maximum of ninety (90%) accumulated days.
- C. Upon the death of a Command Officer, the City shall pay to the deceased officer's estate, at his or her hourly rate of pay, twenty-five (25%) percent of the

² The Command Officers shall also be credited with any military service, as defined and credited under Massachusetts retirement law, M.G.L. c. 32.

deceased officer's accumulated sick leave to a maximum of ninety (90) accumulated days.

Section V: Annually, payable in January, upon the request of an eligible Command Officer, the City shall buy back from the Command Officer, at his or her hourly rate of pay:

- A. Up to eighty-four (84) hours of sick leave, if the Command Officer has accumulated a minimum of ninety-five (95) sick leave days;
- B. Up to one hundred twenty (120) hours of sick leave, if the Command Officer has accumulated a minimum of one hundred ten (110) sick leave days;

Section VI: Sick leave shall accrue during the first six months of paid on-duty injury leave and thereafter may be granted subject to the Chief's approval, which shall not be unreasonably withheld. An employee who returns to work in the bargaining unit after the City's submission for involuntary retirement has been finally rejected shall be credited in full for all such leave which accrued after the first six months.

Section VII:

- A. If a Union member is incapacitated for duty because of injury sustained in the performance of his duty without fault of his own, or if a Union member assigned to a special duty by his superior officer, whether or not he is aid for such special duty by the City, is so incapacitated because of injuries so sustained, he shall receive his regular weekly compensation during the period of such incapacity, except for any period after he has been retired or pensioned in accordance with law, and provided he furnishes the City with a medical report from a duly licensed Massachusetts physician on forms supplied by or accepted by the City setting forth the nature of his incapacitation, its probable duration and stating that the employee is unable to perform his regular duties and services. Notwithstanding receipt of the report, the City reserves the right to have the employee examined by its own duly licensed Massachusetts physician, provided that while a physician's examination is pending, the employee shall continue to receive his regular weekly compensation as provided for and to the extent allowed by this Section.
- B. If the physician's findings coincide, then the employee shall remain on injury leave or return to work, whichever is applicable.
- C. If a dispute exists between the two reports, then the employee and the City shall jointly select a third duly licensed Massachusetts physician to examine the employee. If the parties fail to agree, either party may request the State Commissioner of Public Health or the Worker's Compensation Board to designate an appropriate specialist.
- D. The Finding of the third physician shall be final and binding and not subject to any grievance procedure, contractual or otherwise.
- E. If the findings of the applicable physician or physicians specify that the Command Officer is unable to perform his duties and services, temporarily, then said employee shall return to work on his next regularly scheduled work day or tour of duty following the date on which the applicable physician states the Command Officer is able to do so.

- F. If the findings of the third physician specify that the Command Officer is able to perform his regular duties and services, then the Command Officer is able to perform his regular duties and services, then the Command Officer shall return to work on his next regularly scheduled work day or tour of duty following receipt of the written medical report by the City and Command Officer. The expenses of all examinations and reports required herein shall be borne by the City.
- G. All amounts payable under this Section shall be paid at the same time and in the same manner as, and for all purposes shall be deemed to be, the regular compensation of such Union member.
- H. The Union will cooperate with the Chief in preventing and controlling sick leave abuse.

Section VIII: Upon the death of an active duty Command Officer, 100% of said Command Officer's sick leave, not exceeding 90 days, shall be paid to the beneficiaries listed by said officer with the retirement board.

ARTICLE XVI

PERSONAL LEAVE AND LEAVE OF ABSENCE

Section I: Effective January 1, 2001, the Chief of Police or his designated representative, at their discretion, shall grant, if requested, one personal leave day per year to a Command Officer without loss of pay. If possible, the benefits of this section shall not be utilized so as to extend a holiday or vacation. A personal leave day shall not be carried over to another year.

Section II:

- A. Command Officers shall be granted three (3) additional personal leave days, called family personal days, which shall be granted upon request, and limited to two officers per shift and all Holidays shall be exempted in addition to the provisions of Article XII, Section X.
- B. A Command Officer who is promoted within the calendar year shall have any family personal days already used as a Patrol Officer deducted from the above.

Section III: Subject to the operating needs of the Department determined by the Chief of Police, a leave of absence without loss of pay will be permitted for the following reasons:

- A. Attendance by a Command Officer who is a veteran as defined in Section 21, Chapter 31, of the Massachusetts General Laws as a pallbearer, escort, bugler, or member of a firing squad or color detail at the funeral or memorial services of a veteran as so defined, or of any person who dies under other than dishonorable circumstances while in the service of the Armed Forces of the United States in times of war or insurrection.
- B. Attendance by a Command Officer who is a veteran as defined in Section 21, Chapter 31 of the Massachusetts General Laws, as a delegate or alternate to State or National Conventions of certain veterans' organizations as designated, from time to time, during the life of the Agreement, by the Mayor of the City.
- C. Inoculations required by the Municipal Employer;
- D. Blood donations authorized by the department;

- E. Promotional examinations for the promotion to any position in the Service of the department conducted by the City of Marlborough;
- F. Medical examinations for retirement purposes;
- G. Attendance at any educational programs required or authorized by the City or the Department.

Section IV: MILITARY LEAVE.

Every Command Officer covered by this Agreement who is a member of a reserve component of the Armed Forces of the United States, shall be granted in accordance with Section 59 of Chapter 33 of the Massachusetts General Laws, leave of absence with pay, during the time of his annual tour of duty as a member of such reserve component; provided, however, that such leave shall not exceed seventeen calendar days.

Section V: BEREAVEMENT LEAVE.

In the event of the death of a spouse, father, mother, brother, sister, grandparent, father-in-law, mother-in-law, sister-in-law, brother-in-law, natural children, or any person permanently residing with the family of a Command Officer, such Command Officer shall be granted the next four days off without loss of pay, for the purpose of attending funeral services, arranging for the burial, and as a period of bereavement. It is understood that these days will not include days off falling within such period. Leave without loss of pay under this section shall not be deducted from sick leave or vacation leave.

**ARTICLE XVII
NO STRIKE CLAUSE**

No member of the Command Officers Union covered by the terms and provisions of this Agreement shall during the life of this Agreement engage in, induce, or encourage any strike, work stoppage, slow-down or concerted effort to withhold services.

**ARTICLE XVIII
JOB BIDDING AND POSTING**

When a specialist vacancy or position occurs, the Chief of Police shall send written notification to all Command Officers in the rank in which the vacancy or position exists. The notification shall indicate the classification or specialty position and the general and specific duties of the position as well as a closing date for applicants. Command Officers wishing to be considered for the position shall notify the Chief of Police in writing by the closing date indicated on the notification. In determining who will fill said position, the Chief of Police shall consider: seniority, knowledge, training, ability, skill, efficiency, education, leadership ability, past performance, and any other factors which the Chief considers necessary. The Chief of Police, in the sole exercise of his discretion is to determine who will fill said position.

ARTICLE XIX
SALARIES

Section I: The base salaries of Command Officers, which shall always be calculated on the basis of, a fifty-two (52) week per year formula, shall be increased the following percentages and amounts on the dates indicated:

Effective July 1, 2018	2%
Effective July 1, 2019	2.5%
Effective July 1, 2020	2%

The wage rates are set forth in Addendum A of this Agreement. All employees shall be paid by way of electronic, paperless, direct deposit on a no less than biweekly basis. All references in this contract to weekly compensation shall mean biweekly compensation.

Effective July 1, 2000, an Adjusted Base Pay will be computed for each Command Officer by adding the Command Officer's Educational Incentive Pay (Quinn Bill) to his/her Base Pay. All other incentives (Longevity, Night Shift Differential) will be individually computed from the Adjusted Base Pay and then added with the Adjusted Base Pay to form the Command Officer's annual pay rate from which weekly and hourly rates of pay shall be calculated.

The Union and City agree that, during the life of this contract, the Union will receive no additional compensation for the use of or taking part in defibrillation training or use, and that the City will provide only those Command Officers employed as of the date of this Agreement eight (8) hours of overtime for the purpose of training. The annual retraining will be status quo along with the current practice of CPR/First Responder Training and will be included in the annual four-hour session per current practice.

The Union and City agree that the Police Chief may schedule each Command Officer for up to 24 hours of unpaid time per fiscal year, in increments to be determined by the Police Chief, to attend staff meetings and/or training.³

The Chief shall schedule staff meetings for two hours, training for four hours and community, neighborhood or board meetings for four hours. If the scheduled staff meeting, training, or community, neighborhood or board meeting ends before the scheduled number of hours, the Command Officer will be credited with two or four hours, respectively.

Section II: Command Officers regularly scheduled to work tours of duty commencing on or after 4:00 p.m. and prior to 8:00 a.m. shall receive, in addition to regular weekly compensation, a weekly night differential to his annual base salary of five (5%) percent.

Night differential shall be included in base pay for the purposes of computing holiday, vacation, sick, and injured pay, and for retirement/pension purposes to the extent allowed by law.

³ The parties shall enter into a Side Letter, which discusses how such time shall be charged in the event a Command Officer files a claim for a minimum wage payment.

Section III: All Command Officers with ten (10) or more years of police service with the City of Marlborough shall receive a weekly differential equal to five (5%) percent of their annual base salary in addition to regular weekly compensation and any other differential to which they may be entitled.

Section IV: **EDUCATIONAL INCENTIVE.**

Payments to Command Officers for academic credits as detailed in Section 12.40(3) of the City Code of the City of Marlborough shall be as determined by Section 108L of Chapter 41 of the Massachusetts General Laws, as amended, except that no Command Officer shall suffer any loss of economic benefit as a result of this Section, and further that Command Officers with an Associate's Degree shall receive a minimum of twelve (12%) percent.

Section V: **FIRST RESPONDER.**

Reserved for future use, effective July 1, 2006; provided however, that any Command Officer who is on the payroll of the Police Department as of June 30, 2007, will continue to be eligible for the 2% First Responder incentive until such Officer achieves one year of service in his or her rank and is placed on Step 2 of his or her rank.

Section VI: **BREAKDOWN OF BASE PAY.**

The City agrees to either:

- A. Utilize paycheck stubs that clearly details a Command Officer's base pay and add-on compensation; or,
- B. At the time of any change to the weekly pay of a Command Officer, provide the Command Officer with a written breakdown of base pay and add-on compensation.

Section VII: **LONGEVITY INCENTIVE.**

A Command Officer who has attained 30 years of creditable service for retirement shall receive 3% base salary increase (i.e., for longevity), subject to the following:

- A. On or before January 10th of each year said qualified Command Officers at their option shall notify the City that they shall retire on or before March 10 of that year. At the time of the actual retirement, the Command Officers shall have applied to their base salary increase an additional amount of three (3) percent based on their salary for the previous 12 months from the actual date of retirement.
- B. On or before April 1, 2004, Command Officers at their option shall notify the City they are retiring from the City Police Department on or before June 30, 2004. Said Command Officers shall have applied to their salary base increase an additional amount of 3% based on their salary for the previous 12 months from the actual date of retirement.
If at any time in the future the Massachusetts Legislature and the City adopt said legislation commonly known as 25/75 or some similar year/percentage adoption by the state, the year (i.e., 25) shall apply as if 30 for so long as said options apply.

Section VIII: **CERTIFICATION.**

All Command Officers shall receive a one-time \$1,500.00 increase to their base salaries effective upon certification of the Marlborough Police Department by the Massachusetts Police Accreditation Commission.

Section IX: **DIRECT DEPOSIT.**

All employees shall be paid by way of electronic, paperless, direct deposit.

Section X: In exchange for agreeing to the drug testing policy and light duty provisions, the wage scale (ADDENDUM A) shall be adjusted to reflect a one-time \$2,000 increase to the base salaries of all Command Officers effective on the first payroll after ratification.

Section XI: **CANINE STIPEND.**

- A. The Police Chief, in his sole discretion, shall select an officer to serve as a full time canine handler who will work a 4 day on 2 day off schedule. Said selection shall not be the subject of a grievance or arbitration. The canine handler will receive a six thousand dollar (\$6,000.00) annual stipend for the care of said canine. Care will consist of, but not limited to: feeding, grooming, brushing, bathing, at home training, exercising, and administering medicine for the canine. The stipend described above will also compensate for the canine handler's preparation of court related documents; police cruiser care, and home kennel care. In addition, this will cover the canine handler's time spent updating and maintaining records, completing and submitting canine deployment reports as well as addressing any canine needs that might arise both on and off duty.
- B. The canine handler will have sole responsibility of the canine during both on and off duty hours and maintain sole custody of said canine. If the canine should suffer an injury and is unable to perform duties or the canine reaches an age where policing is not feasible, the handler shall have the option upon release, to take full custody of said canine.
- C. The canine handler will attend two (2) eight (8) hour training sessions per month, twelve (12) months per year, to comply with national standards in order to maintain canine and handler's certifications. The canine handler will work in *Lieu of Shift* on training days set forth by the canine training group. The canine handler will provide appropriate notice to their supervisor of monthly trainings. Additionally, the canine handler agrees to schedule all trainings during his/her work day. If a said training conflict is unavoidable, canine handler will inform his/her supervisor in order to make necessary schedule adjustments to avoid overtime.
- D. Notwithstanding the provisions of Article XIX Section 2, should the canine handler be recalled or called out for any canine related calls, the canine handler shall submit a minimum of two (2) hours of overtime and then receive OT pay beyond 2 hours for actual time worked.
- E. The canine handler will not be compensated for the canine's care and maintenance on the canine handler's scheduled days off *unless* providing transportation to and from veterinarian and like health care facilities whenever

- the canine should need any medical treatment. If said medical care is needed, the canine handler will submit for two (2) hours of overtime.
- F. If the canine handler is on recognized leave of absence, including injured on duty, and cannot perform basic care and maintenance of the canine, the stipend described above in paragraph A shall be prorated during said period.

ARTICLE XX

DUES CHECKOFF AND UNION SECURITY

Section I: DUES.

The employer agrees to deduct Union dues upon receipt of authorization cards from Command Officers who desire to have the Employer deduct such dues. The Treasurer of the City, after such deductions are made, will remit on a monthly basis, monies deducted to Local 366 at its current address, which will be provided by the Union, along with a list of current Union members. The Employer will make no deductions on account of assessments for back dues. The form of written authorizations to be honored by the Employer for the deduction of Union dues shall be supplied by the Union.

Section II: AGENCY SERVICE FEE OR UNION SECURITY.

All Command Officers covered by this Agreement shall be required as a condition of employment to make payment on or after the 30th day following the beginning of such employment or the effective date of this Agreement, whichever is later, or an Agency Service Fee to the Union. Such Agency Service Fee shall be in the amount equal to ninety (90%) percent of the Union dues. At the election of the Command Officer, said Agency service Fee may be deducted from his wages upon presentation to the City of a signed authorization. Said authorization may be canceled by sixty days written notice to the City. A Command Officer who does not authorize the City to make weekly payroll deductions as provided herein shall make the Agency Service Fee payment directly to the Union Comptroller. This section shall conform to the provisions of Section 12, Chapter 150E of the Massachusetts General Laws.

ARTICLE XXI

MISCELLANEOUS

Section I: Command Officers shall not be required to clean cars, sweep the station, or perform station maintenance, etc., in a custodial or janitorial capacity.

Section II: Once each fiscal year, each Command Officer shall be relieved from regular duties to attend a one-week refresher training program approved the Massachusetts Criminal Justice Training Council, without loss of pay, without overtime pay.

Section III: All Command Officers may reside within fifteen (15) miles of the perimeter of the City of Marlborough, but within the Commonwealth of Massachusetts as provided in Chapter 48, Section 58E, M.G.L., and Chapter 373 of the Acts of 1978. Residence outside of the City of Marlborough shall not bar consideration of a Command Officer for a Civil Service or non-Civil Service promotion or assignment within the bargaining unit.

Section IV: All persons covered by this Agreement shall be required to comply with written Department rules as may prohibit officers from overriding automatic seatbelts or airbags.

Section V: In the event the Chief of Police decides to implement a fitness program during this Agreement, the parties shall engage in impact bargaining.

Section VI: No provision of this Agreement prevents the City from seeking a second medical opinion in any instance.

Section VII: Effective July 1, 2003, the City shall pay or reimburse said Command Officers for a pistol permit renewal fee, if the same is required by the City.

ARTICLE XXII

PROMOTIONS AND VACANCIES FOR CAPTAINS, LIEUTENANTS AND SERGEANTS

Promotions are based upon the merits of the candidates and their personal performance in the promotion process, and never on favoritism or seniority alone. A promotion is an investment in the future, not only for the department, but also for the employees who will be supervised and guided by the promoted member.

Policy: It is the policy of this department to recommend promotions based upon an employee's training, experience and merit. The Mayor is the Appointing Authority. No employees will be denied promotion based upon any discriminatory criteria, including, but not limited to, race, creed, color, national origin, gender, gender identity, sexual orientation, parental status, veteran status, age, union activity, religion, political affiliation, handicap, or any other protected category. When a vacancy occurs within the Union, the City shall fill the position within a reasonable amount of time from the date the position becomes vacant.

Procedures: Promotions of sworn personnel are processed under the direction of the Chief of Police. His/her duties shall include:

- A. Posting written announcements of any scheduled promotional opportunities;
- B. Coordinating with any companies or consultants contracted to participate in the promotion process;
- C. Protecting the integrity of the promotional process by ensuring that all promotional materials, documents, scores, and completed evaluations are kept in a secure location; and will remain confidential to the extent provided through this agreement; and
- D. Maintaining copies of active promotion lists.

Testing/Scoring Materials: Testing and scoring materials shall not be left unattended for any period of time. Materials not under the immediate and direct control of a person authorized to possess them shall be kept in a secure area approved by the Chief of Police. Promotional materials shall be retained by the Chief of Police for the officer's duration of employment. These include:

- A. Interview questions and score sheets; and
- B. Assessment Center questions, exercises, evaluations and other related materials.

Notice of a Promotional Process: The Chief or his/her designee shall advise all affected personnel of an upcoming promotional process no less than 90 days in advance of the assessment date by:

- A. Immediately posting the notice in a prominent place within the police station;
- B. Forwarding the notice to supervisors to be read at roll call; and
- C. Forwarding an electronic copy through the department's email system.

Officers out for an extended illness or injury, on administrative or other leave, or on active military duty or otherwise not likely to receive notice shall be sent a copy of the assessment notice by email or first-class mail.

Eligibility: To be eligible for promotion to the rank of Sergeant the candidate must have three full years of permanent full-time service with a police department as of the assessment date and have a minimum of an associate's degree.

To be eligible for promotion to the rank of Lieutenant the candidate must be a permanent full-time member of the Marlborough Police department for a minimum of five years full time service with the department and with a minimum of two years of service as a Sergeant with the Marlborough Police as of the assessment date and have a minimum of a bachelor's degree. Alternatively, candidates without a bachelor's degree will become eligible upon three or more years of service as a Sergeant with the Marlborough Police Department.

To be eligible for promotion to the rank of Captain the candidate must be a permanent full-time member of the Marlborough Police department with a minimum of one year of service as a Lieutenant with the Marlborough Police Department as of the assessment date and have a minimum of a bachelor's degree.

Should fewer than three Lieutenants elect to participate in a promotional process for the rank of Captain, the process will be open to Sergeants with a minimum of five years of full time service with the department and with a minimum of two years of service as a Sergeant with the Marlborough Police as of the assessment date and have a minimum of a bachelor's degree.

Promotional Process: Promotions to the rank of Sergeant, Captain and Lieutenant will be based on an assessment center evaluation and an oral board. Written exams may be used at the discretion of the City.

Assessment center evaluations will be given when determined by the Chief of Police, however all vacancies will be filled within a reasonable amount of time following the vacancy.

The City will consult with the Union and determine the process for assessment centers and provide that to the Union in advance.

Assessment results are valid for one promotional process following the assessment unless otherwise agreed by the parties, but no eligibility list will exceed one year from the date of the assessment.

One Union representative may attend the assessment center for observational purposes, pursuant to the reasonable guidelines established by the organization conducting the assessment center. If available, videotapes of the assessment center may be reviewed by a team of representatives of the City and Union solely for the purposes of an appeal process.

In the interest of career development, the Chief of Police shall make every effort to meet with candidates once the promotional process is complete for purposes of providing feedback to candidates. To the extent possible, assessment center representatives will debrief the candidates regarding their performance in the promotional processes.

Candidate Interviews: In addition to an assessment center, nothing shall prevent the City from conducting an interview of the candidates, to include oral boards. Interviews shall be conducted from a prepared list of questions, reviewed by a union representative, and the board(s) will rate responses.

Candidate Selection: The Chief of Police shall make a written recommendation for promotion from the list of eligible candidates based on the following criteria:

- A. Job related experience;
- B. Performance evaluation in his/her present position (including contributions to the department);
- C. Results of Assessment Center, written exam, and interview;
- D. Supervisory evaluation of the employee's promotion potential;
- E. Sick Leave record;
- F. Formal education and training;
- G. Disciplinary record of the employee;
- H. Work ethic and initiative.

Final Selection: The Mayor is the appointing authority and shall determine the final selection of a candidate for promotion. The parties agree that the Union shall have the right to grieve and arbitrate alleged violations of the Promotion Procedure, provided that any grievance cannot challenge any written exam question, any question or score from an oral interview or any question asked during interviews throughout the promotional process. No individual who is not a member of the bargaining unit shall have the right to grieve any aspect of the Promotion Procedure. No individual shall have the right to arbitrate alleged violations of the Procedure without the approval of the Union. The arbitrator will not have the right to order a particular candidate to be promoted but will have the right to have the promotional process re-done. The Mayor's decision on promotion will stand until the new promotional process is complete. If the officer who was originally promoted is not selected after the new promotional process, he/she shall be returned to the previous rank held.

The Union shall, on behalf of any candidate who is a member of the bargaining unit, file an appeal of the promotional process in accordance with Article VII. All grievances under this promotional process will start at Step II.

ARTICLE XXIII LAYOFF AND RECALL

For purposes of this Agreement, the term "Seniority" shall mean length of continuous service of any member of the Bargaining Unit within the ranks he/she holds.

For the purposes of this Agreement, the term "layoff means a reduction in the number of employees due to a lack of work, lack of funds or abolition of position. In the event of a layoff; the least senior employee or employees shall be laid off first. In any such case a five (5) days' advance notice of the contemplated layoff shall be given to the employee in writing; a copy of such notice shall also be given to the Union.

In the event that a layoff occurs in the rank of Captain, the employee with the least seniority in that rank shall have the opportunity to bump the employee with the least seniority in the rank of Lieutenant. In the event that a layoff occurs in the rank of Lieutenant, the employee with least seniority in that rank shall have the opportunity to bump the employee with the least seniority in the rank of sergeant. In that event, and in the event that a layoff occurs in the rank of Sergeant, the employee with the least seniority shall have the opportunity to bump the patrolman with the least seniority. If any member of the Union is demoted due to layoffs, that member shall be subject to reinstatement to the previous rank for a period of five (5) years from the date of demotion.

A laid-off employee shall have recall rights for a maximum period of five (5) years. Recall shall be in order of seniority with the employee with the highest level of seniority having first right of recall. Notice of recall shall be via certified mail to the employee's last known address. A recalled employee shall notify the Chief of Police within fourteen (14) calendar days of mailing of the recall notice of his or her intention to return to the Marlborough Police Department. Any person refusing or failing to exercise such recall opportunity within such fourteen (14) day period shall be deemed to have waived his or her right of recall permanently and absolutely. Employees must be available to work within twenty-one (21) calendar days of receiving notice in order to be eligible for recall. This requirement may be waived with the agreement of the Chief of Police. Prior to returning to work a recalled employee may be required to undergo a physical examination, physical abilities test or such other examination or investigation as the Chief of Police deems necessary and appropriate. If, based on the results of such examination or investigation, the Chief of Police rescinds the offer of recall he/she shall provide the employee with a written statement of his reasons for the rescission.

Laid off employees will be responsible for maintaining any required licenses or certifications, provided that laid off employees are allowed to attend department training sessions, if available at no cost to the employee or the City. Laid off employees will be allowed to attend courses which involve a cost provided they pay their portion of the costs. Laid off employees, who are otherwise no longer employed by the City in any capacity, shall sign a Release of All

Claims arising from the training on a form provided by the City as a condition of attendance of such City-sponsored training sessions and/or courses. This form will indicate that the individual is participating on an unpaid voluntary basis and not as employees of the City and, except in instances involving gross negligence on the part of the City, they accept all risks associated with participation in the program.

This provision is subject to the grievance and arbitration provision.

ARTICLE XXIV

JUST CAUSE FOR EMPLOYEE DISCIPLINE AND DISCHARGE

Employees will not be disciplined or discharged without just cause. An employee who has been disciplined or discharged may elect to appeal his/her discipline or discharge to binding arbitration in accordance with the grievance procedure of this Agreement and pursuant to the provisions of Section 8 of Chapter 150E; provided that, upon filing for arbitration, any such election will constitute a waiver of any right to appeal such matter to Civil Service

ARTICLE XXV

TEMPORARY MODIFIED WORK PROGRAM (LIGHT DUTY)

Section I: WORK-RELATED ILLNESS OR INJURY.

If a physician designated by the City of Marlborough determines that a police officer is eligible for temporary modified work, the Chief may assign that police officer to a Temporary Modified Work Program. Failure of the police officer to comply with the Temporary Modified Work Program may result in suspension or termination of IOD benefits. The physician designated by the City shall be Board-certified or otherwise be a specialist or have expertise in the relevant area of injury or illness. Any determination that an officer can do temporary modified work shall be made only after a review of the specific duties that the officer will be asked to perform. The City-designated physician shall give his or her opinion as to whether the officer can perform the specific tasks enumerated.

An officer may challenge the City-designated physician's determination of TMWP eligibility within 15 days of such determination by providing an evaluation report from his/her physician to the Chief. The officer's physician shall be provided the same information as was supplied to the City-designated physician, in addition to the evaluation by the City-designated physician.

If the two physician determinations conflict and the parties do not agree with respect to the officer's eligibility to perform TMWP, the parties shall endeavor to jointly select a third physician within ten days of said disagreement. Failing agreement within that timeframe, the City shall, within seven days, designate a third physician from among physicians specializing in the area of medicine who conduct such examinations under the workers compensation or retirement statutes, who shall conduct an evaluation of the officer, with all of the information provided to each physician and both physician's evaluations. The decision of the third physician shall be final and binding for the period of time in question and not subject to the grievance and arbitration procedure.

Section II: NON-OCCUPATIONAL ILLNESS OR INJURY.

Upon release to the City of the medical reports necessary to make a determination of ability to perform temporary modified work, an employee on NOSL may request a temporary modified work assignment. If the employee's physician determines that the employee is eligible for TMWP, the Chief of Police may assign that employee to a temporary modified work program. The City shall have the right to require that the employee be examined by a City-designated physician in order to confirm the employee's ability to return to temporary modified work.

Section III: GENERAL PROVISIONS.

- A. Temporary modified work duties shall be related to law enforcement and may include, but not be limited to, the following: dispatching, house officer, data entry, report writing, community education, research, and training.
- B. The Chief of Police, at his or her sole discretion, may limit the number of police officers on temporary modified work plans at any given time. TMWP shall be reviewed on a periodic basis and notice shall be provided to the police officer whether or not the TMWP is to continue. In no event will a police officer be authorized for TMWP in excess of six (6) consecutive months without the advance written approval of the Mayor or his or her designee.
- C. The Chief of Police may change the work schedule of the officer if the work assignment clearly requires an alternative shift schedule. Such work shift shall remain only for the period of the TMWP. Schedules will be developed in order to accommodate the officer's need for on-going treatment. No officer regularly assigned to a shift shall be involuntarily reassigned in order to accommodate an employee on Temporary Modified Work Program.
- D. Police officers on TMWP shall not be eligible for any overtime (excluding court time) or detail assignments except in extraordinary circumstances with the advance approval of the Chief of Police or his or her designee.
- E. Timeframes in this Article may be extended by mutual agreement of the Parties.

**ARTICLE XXVI
DRUG TESTING**

Section I: PURPOSE.

The purpose of this policy is to provide employees and officials of the City of Marlborough ("City") with notice of the provisions of the City's Drug and Alcohol Testing Policy ("Policy") as it affects them. It is the policy of the City that a drug and alcohol-free work place must be maintained by City employees at all times and this requirement justifies the use of reasonable employee drug and alcohol testing program. The use of controlled substances and other forms of drug and alcohol abuse seriously impair an employee's physical and mental health, and thus safety and job performance. To ensure high standards of performance for performing City business and to preserve public trust and confidence in the City's workforce, there shall be a testing program to detect drug and alcohol use in the workplace.

Section II: APPLICATION.

This Policy applies to all Command Police Officers in the City of Marlborough.

Section III: DEFINITIONS.

Prohibited Substances: Prohibited substances include, but are not limited to: cocaine, opiates (e.g., heroin, codeine), phencyclidine (PCP), cannabinoids (marijuana), amphetamines, and alcohol. The City will test for all of these substances. For the purposes of this Policy, alcohol is defined as the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol. Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Legal and Prescribed Drugs: A legal prescription means a prescription or other written approval from a physician for the use of a drug by an individual in the course of medical treatment. It must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization. The appropriate use of legally prescribed and non-prescription medications is not prohibited so long as it does not impair the officer in the performance of his/her duties. However, the use of any substance which carries a warning label that indicates the mental functioning, motor skills, or judgment may be adversely affected must be reported to supervisory personnel and medical advice must be sought, before performing work-related duties. The misuse or abuse of legally prescribed drugs or the use of illegally obtained prescription drugs shall be considered prohibited conduct. This prohibition includes the use of medication that is prescribed to an individual other than the employee.

Section IV: PROHIBITED CONDUCT.

The following conduct is prohibited:

- A. Unauthorized use, possession, manufacture, distribution, dispensation, purchase, or sale of a prohibited substance or alcohol on City business, in City-owned vehicles, in vehicles being used for City purposes, during working hours, effecting work in the workplace, or on City property (except for use of alcohol on City property during non-working hours where use is permitted, and where such use does not affect work performance).
- B. Unauthorized storage of any prohibited substance or drug paraphernalia in a desk, locker, City vehicle or vehicle used for City business or other repository on City property.
- C. Reporting to work under the influence of alcohol or prohibited substance while on City business, in City supplied vehicles, in vehicles being used for City business, during working hours, or on City property.
- D. Possession, use, manufacture, distribution or sale of a prohibited substance while off-duty.
- E. Switching or adulterating any blood, urine, hair or other test sample collected pursuant to this Policy.
- F. Refusing consent to testing or refusing to submit a breath, urine, blood, hair or other test sample for testing, provided that such testing is ordered and such sample is required in accordance with the provisions of this Policy.
- G. Failing to adhere to the terms of any rehabilitation agreement which the employee has signed.

- H. Conviction, guilty plea or charge that is continued without a finding (CWOFF) under any state or federal drug or alcohol statute.
- I. Failure to immediately notify the appropriate City official of any arrest or conviction for a drug or alcohol offense.
- J. Refusing to comply with the terms of a rehabilitation agreement entered into in accordance with the provisions of this Policy.

Note: Employees shall notify a supervisor if they are taking prescription drugs that could impair performance.

Section V: REASON FOR TESTING.

Testing of employees for drug and/or alcohol use will be conducted in the following circumstances:

- A. All covered employees will be subject to drug and/or alcohol testing where there is reasonable suspicion to believe that the employee is under the influence of alcohol or a prohibited substance in violation of this Policy. A determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. The observations must be recent, and a supervisor who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to prohibited substance abuse or alcohol misuse, must be able to express clearly those observations. The behavior leading to the determination must be documented, as witnessed by the supervisor, within 24 hours. Examples of reasonable suspicion include, but are not limited to the following:
 - Overt signs and symptoms of impairment
 - The detectable odor of alcohol
 - Evidence of drug use, including, but not limited to possession of drug paraphernaliaNo test based on reasonable suspicion will be conducted without the written approval of the Mayor or his/her designee.
- B. Each surviving driver involved in an on-duty vehicular accident shall be subject to post-accident drug and alcohol testing if any one of the following conditions is met:
 - There is a fatality; or
 - The driver is cited for a moving violation AND either:
 - The vehicle is towed from the scene; or
 - Someone is medically evacuated from the scene.

Section VI: CONSEQUENCES OF A POLICY VIOLATION.

A positive test in violation of this Policy will result in discipline in accordance with the disciplinary procedures detailed below. Additional violations of this Policy will result in further disciplinary action, up to and including termination from employment.

The following disciplinary actions will be taken for violation of this Policy:

- A. First Violation: Depending on the specific circumstances of the case, an employee may receive a suspension without pay for his first violation of this Policy. Employees will be advised that subsequent violations of the Policy may result in further discipline, up to and including immediate termination of employment. Prior to returning from the unpaid leave, the employee shall seek assistance through the Employee Assistance Program (EAP), and provide a certificate to the Mayor establishing that he/she has successfully completed the program.

Note: The City may proceed directly to a more advanced step where there are compelling reasons to justify immediately termination. Follow-up testing shall be conducted after first offense to include a minimum of six random tests during the first 12 months back to work and follow-up testing may continue for up to five years.

- B. Subsequent Violations: May result in termination of employment.

Section VII: TESTING PROCEDURES.

Drug and alcohol testing will be conducted by an approved National Institute of Drug Abuse (NIDA) and/or Department of Health and Human Services (DHHS) laboratory. Collection of samples will follow accepted "chain of custody" procedures and include bifurcated samples to assure that the donor will be provided with a sample at his/her request. For positive drug screen results, a representative from the testing laboratory will contact the donor, conduct a medical history, and coordinate with the employee's personal physician, as necessary, to make a final determination of presence of illegal drugs in a test.

Drug and alcohol testing for City employees under this Policy will be conducted as follows:

- A. Upon notification that an employee is subject to testing under this Policy, the Department Head or his designee will contact the Mayor who will arrange for the drug and/or alcohol testing.
- B. The Mayor or his/her designee or the Department Head or his/her designee will promptly set up an appointment for the appropriate tests to be conducted.
- C. The employee will go to the appropriate testing facility, will present a picture I.D. and provide the necessary test samples.
- D. Urine samples will be used to test for controlled substances. Split test samples will be maintained under accepted chain of custody procedures. Breath tests will be used for alcohol testing.
- E. Test results will be provided to the Mayor or his/her designee. The following initial cutoff levels shall be used when screening specimens to determine whether a specimen is negative:

TetraHydraCannabinol (THC)	50 ng/ml
Amphetamines	500 ng/ml
Methamphetamines	500 ng/ml
Cocaine	150 ng/ml
MDMA (Ecstasy)	500 ng/ml
Opiates	2,000 ng/ml
Monoacetyl morphine	10 ng/ml

Phencyclidine (Angel dust, PCP)	25 ng/ml
Codeine	300 ng/ml

If initial testing results are negative, testing shall be discontinued, all samples destroyed, and records of the testing expunged from the employee's file. Only specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GS/MS) techniques at the following listed cutoff values.

TetraHydraCannabinol (THC)	15 ng/ml
Amphetamines	250 ng/ml
Methamphetamines	250 ng/ml
Cocaine	100 ng/ml
MDMA (Ecstasy)	250 ng/ml
Opiates	2,000 ng/ml
Monoacetyl morphine	10 ng/ml
Phencyclidine (Angel dust, PCP)	25 ng/ml
Codeine	300 ng/ml

A breathalyzer or similar test equipment shall be used to screen for alcohol use. This screening test shall be performed by a qualified individual.

0.02 and below is negative

0.021 – 0.049 requires 24 hours off work

0.05 and above is positive

- F. If an employee tests positive for drugs, he/she at his/her own expense may within twenty-four (24) hours have the second sample, held under chain of custody, tested at another NIDA and DHHA-approved laboratory and shall provide the test results to the City.
- G. If an employee tests positive in a single test, the employee will be referred to a certified Substance Abuse Counselor for appropriate counseling and completion of the EAP. Failure to abide by the requirements of the EAP or the directives of the SAC will result in further discipline, up to and including termination of employment. The Substance Abuse Counselor will be a member of the staff of the City-provided Employee Assistance Program. Nothing in this provision shall be construed to limit the City's authority to discipline an employee who has tested positive under this Policy.

Section VIII: **AMENDMENTS.**

The City expressly reserves the right to amend this Policy.

Section IX: **CONFIDENTIALITY.**

Results of tests conducted pursuant to this Policy, as well as documents related to treatment or participation in EAP shall remain strictly confidential and shall remain separate from other personnel material.

**ARTICLE XXVII
DURATION OF AGREEMENT**

This Agreement shall be in force and effect from July 1, 2018 through, to and including June 30, 2021. On mutually agreed dates at the Mayor's convenience, negotiations shall start for a new Command Officer Agreement. All portions of this Agreement shall remain in full force and effect until such changes or revisions have been agreed upon by both parties.

FOR THE CITY OF MARLBOROUGH:



Arthur G. Vigeant, Mayor

**FOR THE MARLBOROUGH POLICE COMMAND
OFFICERS (LOCAL 366, MASSCOP, IAUPA, AFL-
CIO**



Matthew Hassapes, President

Dan Campbell, Vice President

ADDENDUM A
MARLBOROUGH POLICE COMMAND OFFICERS ASSOCIATION
FY2018 – FY2021 WAGE SCHEDULE



CITY OF MARLBOROUGH SALARY TABLES														P	
05/28/2019 09.46 6876mar	EFF. DATE	GROUP/BU	GRADE/ RANK	DESCRIPTION	PAY BASIS	FREQUENCY	CALC	PERIODS DAY	HRS/ DAY	DAYS/ PERIOD	HRS/ YEAR	DAYS/ YEAR	USE PCT	pmgrstep	
	04/25/2019	CCOM COMMAND OF CAPT	CAPTAIN	Change was made by flat \$ 2,000.0000 No percentage was used.	A ANNUAL	W WEEKLY	11	52.0000	7.46	37.30	5.00	1939.60	260.00	N	
		STEP/LEVEL	PERCENT		HOURLY RATE	DAILY RATE	PERIOD SALARY	ANNUAL SALARY							
	00	0.0000	52.2035		389.4380	1,947.19	101,253.88								
	01	0.0000	54.1745		404.1413	2,020.71	105,076.73								
	04/25/2019	CCOM COMMAND OF LTINT	LIEUTENANT	Change was made by flat \$ 2,000.0000 No percentage was used.	A ANNUAL	W WEEKLY	11	52.0000	7.46	37.30	5.00	1939.60	260.00	N	
		STEP/LEVEL	PERCENT		HOURLY RATE	DAILY RATE	PERIOD SALARY	ANNUAL SALARY							
	00	0.0000	47.5225		354.5173	1,772.59	92,174.50								
	01	0.0000	49.3062		367.8237	1,839.12	95,634.15								
	04/25/2019	CCOM COMMAND OF SRGT	SERGEANT	Change was made by flat \$ 2,000.0000 No percentage was used.	A ANNUAL	W WEEKLY	11	52.0000	7.46	37.30	5.00	1939.60	260.00	N	
		STEP/LEVEL	PERCENT		HOURLY RATE	DAILY RATE	PERIOD SALARY	ANNUAL SALARY							
	00	0.0000	42.5547		317.4581	1,587.29	82,539.10								
	01	0.0000	44.1397		329.2832	1,646.41	85,613.36								

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ADDENDUM A
MARLBOROUGH POLICE COMMAND OFFICERS ASSOCIATION
FY2018 – FY2021 WAGE SCHEDULE
(continued)

CITY OF MARLBOROUGH SALARY TABLES														munis a lyer erp solution	
EFF. DATE	GROUP/BU	GRADE/ RANK	DESCRIPTION	PAY BASIS	FREQUENCY	CALC	PERIODS DAY	HRS/ PERIOD	DAYS/ PERIOD	HRS/ YEAR	DAYS/ YEAR	USE PCT	1		
07/01/2019	CCOM COMMAND OF CAPT		CAPTAIN	A ANNUAL	W WEEKLY	11	52.0000	7.46	37.30	5.00	1939.60	260.00	N		
Change was made by 2.5000%															
No Dollar amount used.															
STEP/LEVEL		PERCENT	HOURLY RATE	DAILY RATE	PERIOD RATE	PERIOD SALARY		ANNUAL SALARY							
00		0.0000	53.5086	399.1740	1,895.87		103,785.23								
01		0.0000	55.5287	414.2448	2,071.22		107,703.65								
07/01/2019	CCOM COMMAND OF LTJLT		LIEUTENANT	A ANNUAL	W WEEKLY	11	52.0000	7.46	37.30	5.00	1939.60	260.00	N		
Change was made by 2.5000%															
No Dollar amount used.															
STEP/LEVEL		PERCENT	HOURLY RATE	DAILY RATE	PERIOD RATE	PERIOD SALARY		ANNUAL SALARY							
00		0.0000	48.7105	363.3802	1,816.90		94,478.86								
01		0.0000	50.5389	377.0192	1,885.10		98,025.00								
07/01/2019	CCOM COMMAND OF SRGT		SERGEANT	A ANNUAL	W WEEKLY	11	52.0000	7.46	37.30	5.00	1939.60	260.00	N		
Change was made by 2.5000%															
No Dollar amount used.															
STEP/LEVEL		PERCENT	HOURLY RATE	DAILY RATE	PERIOD RATE	PERIOD SALARY		ANNUAL SALARY							
00		0.0000	43.6185	325.3945	1,626.97		84,602.58								
01		0.0000	45.2432	337.5142	1,687.57		87,753.69								

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** END OF REPORT - Generated by Mary Ward **